*** THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

+ W.P.Nos.14101 of 1996, 515 & 593 & 1998 and 23405 of 1999

-

% 6th December 2007

Yelati Rambabu & others

…Petitioners

And

$ Govt. of A.P. rep. by its Secretary,
Industries and Commerce Department,
Hyderabad & others

…Respondents

! Counsel for the petitioners: Mr. G.Krishna Murthy
^ Counsel for respondents : G.P. for Land Acquisition

< Gist:

> Head Note:

? Cases referred:

-Nil-

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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Between:

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... Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.Nos.14101 of 1996, 515 & 593 of 1998 and 23405 of 1999

COMMON ORDER:

In these four writ petitions, the notifications issued under Sections 4(1) and 6 of the Land Acquisition Act (for short "the Act"), on different dates, proposing to acquire the lands of the respective petitioners, are challenged. The said notifications were issued for acquisition of lands, for the benefit of A.P. Industrial Infrastructure Corporation (for short "the Corporation").

The petitioners state that they are the owners and possessors of the land and doing agriculture, thereon. They contend that the agriculture is the only source of their livelihood, and their lands were chosen for acquisition, with a view to help certain industrialists. Apart from pleading hardship on account of the proposed acquisition, the petitioners plead that the notifications were issued by an authority, not vested with the power, under the Act. It is stated that though the Act provides for publication of notifications, either by the Government, or by the District Collector, if delegated with the power, the notifications in

the instant case were issued by, and in the name of the Additional Commissioner of Industries and Special Officer (Land Acquisition), Steel Plant and APIIC Limited, Visakhapatnam (for short, the Additional Commissioner).

The petitioners raise an objection, as to the dispensing with the enquiry under Section 5-A of the Act. They state that the very fact that the possession of the land was not taken, several months after the publication of notifications, discloses that dispensing with enquiry under Section 5-A of the Act was resorted to, mechanically. Certain other grounds are also urged.

In the counter affidavit filed on behalf of the respondents, the fact that the lands of the petitioners were notified for acquisition, is admitted. The issuance of notifications, by the Additional Commissioner of Industries, is sought to be sustained, on the ground that he answers the description of '*Collector*', under Section 3(c) of the Act, and on the basis of a notification issued under Section 3-A of the Act. The allegation of the petitioners that the lands are being acquired for the benefit of industrialists, is denied. It is also stated that there is an element of urgency, in the proceedings, and that the possession could not be taken, on account of certain procedural requirements.

Sri G.Krishna Murthy, learned counsel for the petitioners, submits that the Act does not provide for delegation of powers, exercisable under Sections 4(1) and 6 of the Act, to an authority, other than the District Collector, as defined under Section 3(c), and that the Additional Commissioner of Industries Department, cannot be equated to a Collector. He submits that the notifications challenged in W.P.Nos.515 and 593 of 1998, were issued by the Additional Commissioner. He submits that though the notification, under Section

4(1) of the Act and challenged in W.P.No.14101 of 1996, was issued by the District Collector, the declaration under Section 6 of the Act was issued by the Additional Commissioner, and thereby, the entire proceedings are vitiated. As regards the notifications challenged in W.P.No.23405 of 1999, the learned counsel submits that both of them were issued by the Special Deputy Collector, who was only nominated as the Land Acquisition Officer. The learned counsel had placed reliance upon number of decided cases and repeated the contentions urged in the writ petitions.

Learned Government Pleader for Land Acquisition and learned Standing Counsel for the Corporation, on the other hand, submit that if the broader definition of the Collector, as defined under Section 3(c) of the Act, is taken into account, the Additional Commissioner cannot be said to be incompetent to issue notifications. They submit that the Additional Commissioner was delegated powers under the Act, through G.O.Ms.No.289, Revenue Department, dated 18.3.1996. It is also urged that at least in cases, where the notification under Section 4(1) was issued by District Collector, the further proceedings may be permitted to be continued, in accordance with Law.

It is a matter of record that as many as four notifications, under Section 4(1) and equal number of notifications, under Section 6 of the Act, were issued, to acquire the lands of the petitioners and certain others. The purpose of acquisition is to establish, or extend, the industrial estates at the respective places. The Act permits acquisition of lands, by invoking the procedure prescribed by it, for the said purpose also.

Basically, the Act empowers the appropriate Government, to

issue draft notification, under Section 4(1) and draft declaration under Section 6 of the Act, whenever the land of a citizen is needed for public purpose. Section 3-A of the Act was added, through A.P. Act 22 of 1976, which reads as under:

> "***3-A***: ***Delegation of functions***:- The State Government may, by notification in the Andhra Pradesh Gazette, direct that any power conferred or any duty imposed on them by this Act, shall in such circumstances and under such conditions, if any as may be specified in the notification, be exercised or discharged by the District Collector."

Therefore, it becomes competent for the District Collector also, to issue notification under Sections 4(1) and 6 of the Act, in case, he is delegated with the power. Sections 4 and 6 were also amended through the same Act, conferring powers upon the District Collector, to discharge the functions under the said provision. The word '*Collector*' is defined under Section 3(c) of the Act, as under:

> "The expression 'Collector' means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act."

A note of clarification needs to be added here. The expression '*Deputy Commissioner*', is mostly the one, used in the Northern States of the country, and it refers to an authority vested with the revenue powers in a District, in contradiction to the authorities of other Departments, such as Industries, Police, etc.

The Government of Andhra Pradesh issued G.O.Ms.No.235, Revenue Department, dated 10.3.1987, in exercise of power under Section 3-A of the Act, conferring powers upon the District Collectors, to discharge the functions under Sections 4, 5-A, 6 and 17 of the Act, for the purpose of acquisition of lands, needed for establishment of

Industrial Estates, Industrial Development Areas, Industrial Housing Complexes, etc., by the Corporation. The present purpose is covered by that notification.

The Act maintains a compartmentalisation exercise of powers by different authorities. For example, it is not necessary that the same authority, which issued the notification, must be the Land Acquisition Officer. An authority, other than the appropriate Government, or the Collector, can be nominated as the Land Acquisition Officer, to undertake the functions of passing the awards, etc. Another authority is the one, which is conferred with the power to approve the awards under Section 11(1) of the Act. The provision reads as under:

> "11(1). On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements, made under
> Section 8, and into the value of the land (at the date of the publication of the notification under Section 4, sub-section(1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-
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> (i) the true area of the land;
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> (ii) the compensation which in his opinion should be allowed for the land; and
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> (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him; Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf.
>
> (Provided further that it shall be competent for appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf."

Under the scheme of the Act, the respective authorities are to be nominated, in accordance with the relevant provisions.

The Government of Andhra Pradesh issued G.O.Ms.No.289, dated 18.3.1996, conferring the power to approve the awards under sub-section (1) of Section 11, upon the Additional Commissioner of Industries and Special Officer (Land Acquisition Officer), Steel Plant, Visakhapatnam, in respect of the lands acquired for the Visakhapatnam Steel Plant, or for the establishment of the Corporation, within the Districts of Visakhapatnam, Vizianagaram and East Godavari. The said notification would hold good for the present lands also, insofar as the power to approve the awards is concerned. Inasmuch as the notifications are statutory in nature, there is hardly any scope for uncertainty as regards their purport.

If the notifications that are issued, proposing to acquire the lands of the petitioners, are examined, with reference to the above scenario, it emerges that out of the four notifications published under Section 4(1) of the Act, two were issued by the Additional Commissioner of Industries, one by the Land Acquisition Officer, and the fourth one, by the District Collector. The corresponding declarations in the first 3 notifications, under Section 6, were issued and published by the Additional Commissioner of Industries, and in the fourth one, by the Land Acquisition Officer. On the face of it, these notifications, except the one issued by the District Collector, under Section 4(1) of the Act, were approved and published by an authority not vested with the power.

An attempt is made on behalf of the respondents, to impress upon the court that the conferment of power under Section 11(1) of the

Act upon the Additional Commissioner, would hold good for the other functions also. When the Act maintains a clear distinction as to the discharge of powers under different provisions, it is difficult to take the one, for the other. Though the learned counsel for the petitioners had placed reliance upon several judgments, in support of his contention that the notifications are without jurisdiction, this court is of the view that the proposition is so clear, that it hardly needs the support of any decided cases.

It is true that the notification under Section 4(1), which is in challenge in W.P.No.14101 of 1996, was issued by the District Collector, and the same cannot be said to be illegal. If the matter were to have rested there, it would have been competent for the respondents, to take further steps under the Act. However, if the time gap that is required to be maintained between a notification under Sections 4(1) and 6 of the Act is taken note of, it becomes incompatible for the respondents, to take further steps, on the basis of the said notification. Once the declaration issued under Section 6, in respect of the said notification, is set aside, and more than two years have elapsed from the date of publication of the same, it becomes impermissible for them, to proceed further.

Learned counsel for the respondents endeavour to take the help of explanation appended to Section 6, in support of their contention that even if the declaration under Section 6 is set aside, the right of the respondents, to take further steps, on the basis of the notification under Section 4(1) would remain intact, inasmuch as the writ petition was pending and interim orders were in force, for all these years. However, the explanation to the said provision would save only such period, during which, the competent authority was incapacitated from taking

the further steps, *viz*. publication of notification under Section 6 of the Act. If the notification was already published and it was held to be without jurisdiction, they cannot fall back upon the explanation and take further steps, contrary to the procedure prescribed by law. Even if a different view is possible, having regard to the fact that the only remedy for a citizen to protect himself from the eminent domain of the State is to point out the technical defects, the interpretation, which extends protection, the rights of the citizen, must be chosen. It is not as if the respondents are incapacitated from acquiring the lands. If they still feel that the land of the petitioners is needed, they can issue fresh notifications, and the only thing, that can happen if at all is that the petitioners would be entitled to be paid the market value, prevailing as on those notifications. When the Corporation itself is collecting market value, if not more, from the allottees, there is no reason why the petitioners be denied the benefit of the market value, when their only source of livelihood is denied to them.

For the foregoing reasons, the writ petitions are allowed, and the notifications challenged in the respective writ petitions, are set aside. There shall be no order as to costs.

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6th December 2007

Note: L.R. copies be marked.

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